(W 402) C1

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 247 Of 2006.

APPELLANT
DEFENDANT :- Shiv Kumar, Son of Mangal Singh, aged 37 years, Caste - Gond, resident of Village Kaskela, Post Salka, P.S. Pratappur, Tahsil Surajpur, District Sarguja (Chhattisgarh),

V E R S U S

RESPONDENTS
PLAINTIFFS :- 1. Kunti Devi, widow of Ramsai, aged about 53 years,
2. Bihari, son of Ramsai, aged about 25 years,
3. Shiv Prasad, son of Ramsai, aged about 23 years,
4. Dilbasiya, daughter of Ramsai, aged about 21 years,
5. Sonia, daghter of Ramsai, aged about 19 years,
6. Nano, daughter of Ramsai, aged about 17 years,
7. Fulbasiya, daughter of Ramsai, aged about 16 years,

All through their natural guardian mother Kunti Devi widow of Ramsai, all by Caste Cherwa, resident of Village Kaskela, P.S. Pratappur, Tahsil Surajpur, District Sarguja (Chhattisgarh)

P.R. No. 1526 Ve 6
Presented by Shri ... K. Gupta
dated 21.8.06

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(Claim in appeal valued at Rs. 400/- and c.f paid at Rs. 40/- only)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.242/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04/09/2006

Shri Pankaj Agrawal, learned counsel for the appellant.

Heard on the question of admission.

The appellant has preferred this second appeal U/s 100 of the Code of Civil Procedure against the judgment and decree dated 17/2/2006 passed by Second Additional District Judge (FTC) Surajpur, District Sarguja in civil appeal No. 39-A/2005 by which the judgment and decree dated 30/1/2004 passed by Civil Judge Class-II Surajpur, in civil suit No. 208-A/2002 has been confirmed.

This appeal is directed against the decree passed in favour of the respondents by which the sale deed dated 7/12/90 executed by them in favour of the appellant has been declared void and ineffective. It is not in dispute that the deed in question was executed by plaintiffs/respondents with respect to the suit land which was allotted to them on lease for a period of 10 years commencing from 1978 to 1988 and as per the condition No.7 of the lease deed, the allottee was not entitled to transfer alienate or otherwise dispose of the same to another person. Learned trial Court decreed the suit in the following terms:-

(i)- sale deed dated 7/12/90 was declared void and ineffective.

(ii)- Decree for perpetual injunction was passed in favour of the plaintiffs restraining the defendant from interfering with the user in any manner.

However, by impugned judgment learned District Judge has modified the decree to the extent that the sale deed in question has been declared void and ineffective and decree of perpetual injunction has been set aside

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

-2-

मामला क्रमांक ..S.A..247..106 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the appellant submits that it is admitted by the plaintiffs/respondents that the received consideration of Rs. 3,000/- against the total consideration of Rs. 4,000/- and even after this admission the Court below did not direct the plaintiffs to refund the consideration obtained by them and therefore the substantial question of law arises for consideration of this appeal:-

> 'Whether non refund of consideration amounts to illegal enrichment of the respondents?

I have heard learned counsel for the appellant.

Learned counsel for the appellant could not point out any illegality so far as the competence of the plaintiffs in transferring the land in contravention of the sale deed is concerned and the only argument advanced by him was that of illegal enrichment of the plaintiff. During the course of argument learned counsel for the appellants submits that in fact the appellant is in possession of the suit property from the date of transfer and the first appellate Court has recorded this finding in paragraphs 10, 11 & 12 of the impugned judgment. Thus the Court below has decreed the suit of the plaintiffs after considering the over all evidence available on record.

In view of above, this Court is of the opinion that the impugned judgment and decree has been passed by the first appellate Court after appreciation of the evidence and material available on record.

In the result there is no substance in the appeal and no substantial question of law is involved for its adjudication and accordingly this appeal is liable to be dismissed and it is dismissed on the admission stage itself.

Sd/-
Dhirendra Mishra
Judge